

***United States Court of Appeals
for the Second Circuit***

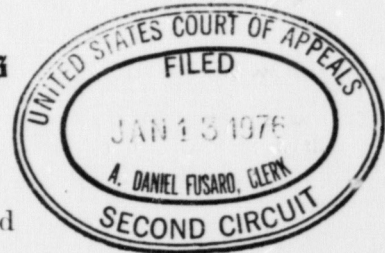


**PETITION FOR
REHEARING**

ORIGINAL

75-7284

United States Court of Appeals
FOR THE SECOND CIRCUIT



LAWRENCE R. BARNETT, C. LEONARD GORDON and
ALFRED L. HOLLENDER,

Plaintiffs-Appellants,

against

DON KIRSHNER, IRVING COHEN, HERBERT T. MOELIS and
KIRSHNER ENTERTAINMENT CORPORATION,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETITION OF PLAINTIFFS-APPELLANTS
FOR REHEARING

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Table of Contents

Preliminary Statement	1
Reasons for This Petition	1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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LAWRENCE R. BARNETT, C. LEONARD GORDON :
and ALFRED L. HOLLENDER, :

Plaintiffs-Appellants, :

-against- :

DON KIRSHNER, IRVING COHEN, HERBERT T. :
MOELIS and KIRSHNER ENTERTAINMENT :
CORPORATION, :

Defendants-Appellees. :
----- x

Docket No.

75-7284

PETITION OF PLAINTIFFS - APPELLANTS
FOR REHEARING

PRELIMINARY STATEMENT

Plaintiffs - Appellants petition for rehearing of a decision of a panel of this Court (Lumbard, Friendly and Mulligan, L.J.J.), filed December 30, 1975 that affirmed the judgment of the District Court in favor of the defendants.

REASONS FOR THIS PETITION

A single and simple issue is presented here. Defendants (appellees here), who were the control group of a close corporation, brought plaintiff's stock without disclosing that the corporation had secretly obtained valuable properties. The issue turns on the timing of the transaction. This court concluded that the sales were completed a few days be-

fore negotiations began for the properties. However, the decision of this Court overlooks the express language of the "consent letters," which were agreements with each of the shareholders of KEC, including the Plaintiffs-Appellants. These provide that the sales would be "null and void" unless the consent of the non-selling shareholders and the corporation could be obtained on or prior to March 1, 1969. As the District Court and this Court found, the consents were not timely obtained. Thus, even though this Court decided that Plaintiffs sold their stock before defendants obtained the property, these sales thereafter became void. At that time plaintiffs were entitled to have the stock back. Without the material facts now known to defendants, plaintiffs lost this opportunity and were cheated. As this point has been overlooked by the Court, the matter should be re-heard, and reversed.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ALFRED L. HOLLENDER,

Plaintiffs-Appellants,

against

DON KIRSHNER, IRVING COHEN, HERBERT T. MOELIS
and KIRSHNER ENTERTAINMENT CORPORATION,

Defendants-Appellees.

On Appeal from the United States District Court
Southern District of New York.

**AFFIDAVIT
OF SERVICE**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Juan Delgado, being duly sworn, deposes and says that he
is over the age of 18 years, is not a party to the action, and resides
at 596 Riverside Drive, New York, New York.
That on January 13, 1976, he served 2 copies of Petition of
on Plaintiffs-Appellants for Rehearing

HARRIS FREDERICKS & KOROBKIN, Esqs.,
Attorneys for Defendants-Appellees,
1271 Avenue of the Americas,
New York, New York 10020

by delivering to and leaving same with a proper person or persons in
charge of the office or offices at the above address or addresses during
the usual business hours of said day.

Sworn to before me this
13th day of January, 19 76

... *Juan Delgado* ...

Charles J. Esposito

CHARLES J. ESPOSITO
Notary Public, State of New York
No. 30-1132025
Qualified in Nassau County
Commission Expires March 30, 1977